

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BERNARD KELLY,

Petitioner,

v.

Case Number 08-13777

Honorable David M. Lawson

KENNETH T. McKEE,

Respondent.

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**ORDER DENYING MOTION FOR RECONSIDERATION**

This matter is before the Court on the petitioner's motion for reconsideration. Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(h)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). "Generally . . . the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court." E.D. Mich. LR 7.1(h)(3).

The petitioner asks the Court to reconsider its order denying his motion for relief from judgment. Specifically, he asks the Court to reconsider its denial of his request for an evidentiary hearing on his ineffective assistance of counsel claim. The Court denied his request because "the Supreme Court's decision in *Cullen v. Pinholster*, [563 U.S. 170] (2011), prohibits [federal courts] from considering new evidence in [a habeas] case." *Hodges v. Colson*, 727 F.3d 517, 541 (6th Cir. 2013). The petitioner acknowledges the limitations imposed by *Pinholster*, but argues that "the Sixth Circuit reasoned in Caudill v. Conover, 8[7]1 F. Supp. 2d 639, 647 (E.D. Ky. 2012), that 'if after

reviewing . . . the State Court record the court determines that any of the claims adjudicated by the State court were based on an unreasonable determination of the facts 2254(d) deference would not apply and new evidence can be considered.” The petitioner’s argument misses the mark.

*Caudill* is an Eastern District of Kentucky case — not a Sixth Circuit case. Because *Caudill* is an opinion by another district court, it is persuasive authority only and not binding on this Court. To the extent that *Caudill* can be construed to support the petitioner’s argument, the Court is not persuaded that it undermines the holding in *Pinholster*. Because the petitioner has not identified a palpable defect in the Court’s order, the petitioner’s motion for reconsideration will be denied.

Accordingly, it is **ORDERED** that the petitioner’s motion for reconsideration [dkt. #53] is **DENIED**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: April 13, 2017

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 13, 2017.

s/Susan Pinkowski  
SUSAN PINKOWSKI